

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

NEW YORK CITY SCHOOL CONSTRUCTION :
AUTHORITY; ADMIRAL ABATEMENT; :
ASBESTOS PRO'S, INC.; CERTIFIED :
ASBESTOS CORPORATION; CST :
ENVIRONMENTAL, INC.; EWT CONTRACTING, :
INC.; KISS CONSTRUCTION; NATIONAL :
ENVIRONMENTAL SAFETY COMPANY, INC.; :
and TRIO ASBESTOS REMOVAL CORPORATION, ✓ :

02-94-0052
98 Civ. 5095 (SHS)

Defendants. :
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62-98-C034

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action alleging that Defendants, New York City School Construction Authority; Admiral Abatement; Asbestos Pro's, Inc.; Certified Asbestos Corporation; CST Environmental, Inc.; EWT Contracting, Inc.; Kiss Construction; National Environmental Safety Company, Inc.; and Trio Asbestos Removal Corporation, violated Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and the National Emissions Standard for Hazardous Air Pollutants for asbestos, ("NESHAP"), 40 C.F.R. Part 61, Subpart M, §§ 61.140-61.156;

WHEREAS, the Defendants performed and administered asbestos removal operations from public schools in New York in 1993 and 1994;

WHEREAS, Plaintiff's complaint alleges that the

Defendants violated the Clean Air Act and NESHAP by failing to notify EPA of the asbestos removal work at sixty-one schools within the time limit prescribed by NESHAP;

WHEREAS, the Defendants dispute the allegations of Plaintiff's complaint;

WHEREAS, the United States and the Defendants agree that settlement of this matter is in the public interest and that entry of this Stipulation and Settlement Agreement without further litigation is the most appropriate means of resolving this matter;

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this Stipulation and Settlement Agreement, the United States and the Defendants hereby agree and stipulate that:

1. Escrow Account

a. Within 15 days after this Stipulation and Settlement Agreement has been signed by the Defendants, the Defendants shall establish an interest-bearing escrow account in a bank duly chartered in New York (the "Escrow Account"). The Defendants shall remit the following amounts to the Escrow Account:

i. New York City School Construction Authority: twenty-eight thousand dollars (\$28,000).

ii. Admiral Abatement: twenty-four thousand dollars (\$24,000).

iii. Asbestos Pro's, Inc.: fifty-six thousand dollars (\$56,000).

Not a signature

iv. Certified Asbestos Corporation: four thousand dollars (\$4,000).

v. CST Environmental, Inc.: four thousand dollars (\$4,000).

vi. EWT Contracting, Inc.: two thousand dollars (\$2,000).

vii. Kiss Construction: two thousand dollars (\$2,000).

viii. National Environmental Safety Company, Inc.: fourteen thousand dollars (\$14,000).

ix. Trio Asbestos Removal Corporation: four thousand dollars (\$4,000).

b. All funds paid into the Escrow Account by the Defendants shall remain in escrow and may not be withdrawn by any person except to make the payment required by Paragraph 2 of this Stipulation and Settlement Agreement; provided, however, that if the Court declines to enter the Stipulation and Settlement Agreement, sums in the Escrow Account shall be returned to the Defendants in the amounts of their individual contributions, together with any accrued income thereon, including without limitation, interest or dividends.

2. Payment of Civil Penalty. Within 20 days of receipt of notification from the United States that the Stipulation and Settlement Agreement has been entered as an order of the Court, the Defendants shall, through the escrow agent, remit to the United States the total amount remitted to the Escrow Account under

Paragraph 1 of this Stipulation and Settlement Agreement, plus any accrued income thereon, including, without limitation, interest or dividends. Payment shall be made by certified check payable to the order of "Treasurer, United States of America" and delivered to the Office of the United States Attorney for the Southern District of New York, care of Assistant United States Attorney Martin J. Siegel, 100 Church Street, 19th Floor, New York, New York 10007.

3. Notice. Within one business day of payment under Paragraph 2 of this Stipulation and Settlement Agreement, the Defendants shall provide written notice of payment to the following:

- a. Michael Arch
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region II
290 Broadway
New York, NY. 10007-1866
- b. Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20044-7611

4. Each Defendant's timely payment of the above-referenced civil penalties shall constitute full settlement and satisfaction of any and all civil claims asserted in the Complaint filed in this action against that Defendant.

5. This Stipulation and Settlement Agreement shall not constitute an admission of liability or fault on the part of the Defendants or any of their present or former officials, employees, or agents.

6. Upon receipt of the payment prescribed in Paragraph

2 of this Stipulation and Settlement Agreement, the United States shall, within ten days, submit a proposed order to the Court dismissing, with prejudice, any and all civil claims asserted in the Complaint filed in this action against those Defendants that have made payment to the Escrow Account and the United States as prescribed in Paragraphs 1 and 2 of this Stipulation and Settlement Agreement. Each party shall bear its own costs and attorneys' fees in this matter.

7. This Stipulation and Settlement Agreement shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amount in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308, and other applicable statutory authority, without further order of this Court, except that, for purposes of this Stipulation and Settlement Agreement only, no Defendant that has made payment to the Escrow Account and the United States as prescribed in Paragraphs 1 and 2 of this Stipulation and Settlement Agreement shall be liable for any unpaid amount of any other Defendant.

8. The United States shall be entitled to interest on any unpaid amount from the date such amount is due at the statutory judgment rate, in accordance with 28 U.S.C. § 1961. Further, Defendants that have not made payment to the Escrow Account and the United States as prescribed in Paragraphs 1 and 2 of this Stipulation and Settlement Agreement shall be liable for reasonable attorneys' fees and costs incurred by the United States to collect

any unpaid amount.

9. Nothing in this Stipulation and Settlement Agreement shall preclude the United States from seeking relief from or sanctions against the Defendants for:

a. claims based on a failure by the Defendants to meet a requirement of this Stipulation and Settlement Agreement;

b. claims based on other or future violations of Section 112 of the Clean Air Act, 42 U.S.C. § 7412, or the National Emissions Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. Part 61, Subpart M, §§ 61.140-61.156;

c. criminal liability; or

d. any alleged violation of applicable law not covered by this Stipulation and Settlement Agreement or alleged in the Complaint in this matter.

10. Nothing in this Stipulation and Settlement Agreement shall preclude the United States from seeking relief from or sanctions against parties other than the Defendants for claims alleged in the Complaint in this matter.

11. This Court has jurisdiction of the subject matter and the parties pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. This Court shall retain jurisdiction for the purpose of interpreting and enforcing this Stipulation and Settlement Agreement.

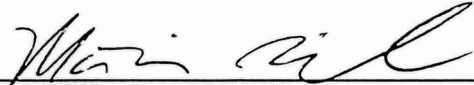
12. Each undersigned representative of the Defendants and the United States hereby certifies that he or she is fully authorized to enter into the terms and conditions of this

Stipulation and Settlement Agreement and to execute and legally
bind such party to this document.

FOR PLAINTIFF UNITED STATES OF AMERICA:


July 20, 1998
Date

MARY JO WHITE
United States Attorney for the
Southern District of New York

By: 
MARTIN J. SIEGEL
Assistant United States Attorney
100 Church Street -- 19th Floor
New York, New York 10007
Tel. No.: (212) 385-6256

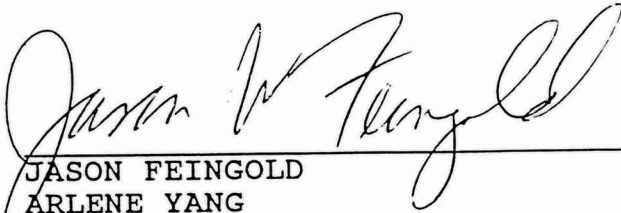
FOR PLAINTIFF UNITED STATES OF AMERICA:

6/9/98
Date



JOEL M. GROSS
Section Chief
Environmental Enforcement Section
Environmental and Natural Resources
Division
United States Department of Justice

6/5/98
Date



JASON FEINGOLD
ARLENE YANG
Trial Attorneys
Environmental Enforcement Section
Environmental and Natural Resources
Division
United States Department of Justice
Washington D.C. 20044-7611
(202) 514-3483

FOR PLAINTIFF UNITED STATES OF AMERICA:

July 16, 1998
Date

David P. Stone
for Eric Schaaf
Acting Regional Counsel
United States EPA - Region II
290 Broadway
New York, New York
10007

FOR DEFENDANT NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY:

MAY 6, 1998
Date


Name SIGNATURE

V.P. & General Counsel
Title

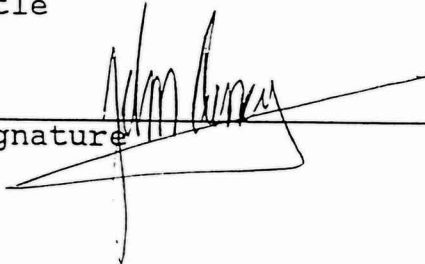
Joseph Giamboni
Signature NAME

FOR DEFENDANT ADMIRAL ABATEMENT:

Date 4/30/88

Name John T. Garry

Title President

Signature 

FOR DEFENDANT ASBESTOS PRO'S, INC.:

Date

Name

Title

Signature

FOR DEFENDANT CERTIFIED ASBESTOS CORPORATION:

5/8/98
Date


Name

President
Title

Ralph F. Romano
Signature

FOR DEFENDANT CST ENVIRONMENTAL, INC.:

April 3, 1998
Date

Fedor Wawra
Name

Vice President/Regional Manager
Title


Signature

FOR DEFENDANT EWT CONTRACTING, INC.:

6-3-98
Date

FRANK X. STUFANO
Name
PRESIDENT / OWNER
Title
Frank X. Stufano
Signature

FOR DEFENDANT KISS CONSTRUCTION:

4-1-98
Date

BRENDAN LAWLESS
Name

President
Title

Brendan Lawless
Signature

FOR DEFENDANT NATIONAL ENVIRONMENTAL SAFETY COMPANY, INC.:

5/14/98
Date

Mark Cranklios
Name

V.P.
Title

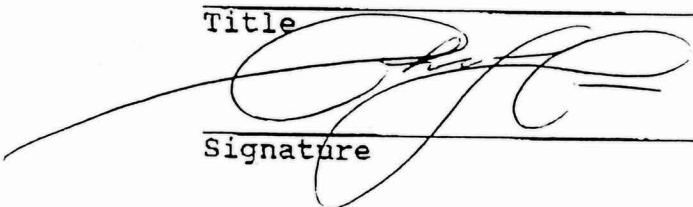
Mark Cranklios v.f.
Signature

FOR DEFENDANT TRIO ASBESTOS REMOVAL CORPORATION:

4-13 98
Date

CHRISTOPHER HORAN
Name

President
Title


Signature

So Ordered this _____ Day of _____, 1998.

United States District Judge

CERTIFICATE OF SERVICE BY FEDERAL EXPRESS

MANUEL BERMUDEZ, is employed in the United States Attorneys Office, Southern District of New York.

On the 21st day JULY of 1998 I served a copy of the within GOVERNMENT NOTICE OF LODGING OF PROPOSED STIPULATION AND SETTLEMENT AGREEMENT

by causing service copies to be delivered by FEDERAL EXPRESS:

ALL PARTIES LISTED ON ANNEXED LIST

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: 21ST JULY, 1998

Manuel Bermudez

Scott E. Furman, Esq.
Shatzkin & Furman
108-18 Queens Blvd.
Forest Hills, Queens 11375

Steven Coren, Esq.
Coren & Braun
570 Lexington Avenue, 14th Floor
New York, NY 10022

Brendan Lawless
Kiss Construction
59-24 57th Street
Maspeth, New York 11378

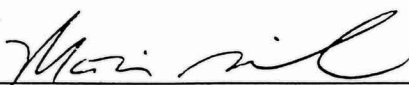
Tom Heavey
Asbestos Pro's Inc.
397 Fifth Avenue
Brooklyn, NY 11215

comments received, as well as responses to the comments, and at that time, if appropriate, will request the Court to approve and enter the Stipulation and Settlement Agreement.

Dated: New York, New York
July 21, 1998

Respectfully submitted,

MARY JO WHITE
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: 
MARTIN J. SIEGEL (MS-4228)
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New York, New York 10007
Tel. No.: (212) 637-2738

To: Eric Bregman, Esq.
Sive, Paget & Riesel
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Davidoff & Malito
605 Third Avenue
New York, New York 10158

Darrell Whiteley, Esq.
Lester, Schwab, Katz & Dwyer
120 Broadway
New York, NY 10271-0071

So Ordered this 24th Day of September, 1998.



United States District Judge